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Re N (A Child)

HIGH COURT (KUALA LUMPUR) — CRIMINAL REVISION NO 43-7 OF
2003

AUGUSTINE PAUL J

22 APRIL 2003

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Criminal Procedure — Arrest — Arrest and detention of child — Whether arrest and detention should be under provisions of Child Act 2001 — Whether s 117 of CPC applicable to the detention of a child

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Criminal Procedure — Arrest — Arrest and detention of child — Period of detention — Whether period of detention dependent on the facts of each case

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N — a child within the meaning of the Child Act 2001 ('the Act') — was produced before the magistrate at Kuala Lumpur for an order to remand her for a period of seven days under s 117 of the Criminal Procedure Code ('the CPC'). The magistrate converted the remand application to one under s 84(2) of the Act and ordered N's detention as provided by the Act. The magistrate thereafter entertained doubts as to the correctness of his course of action. He thus requested the High Court to revise his order if there was an error therein. At the revision proceeding in the High Court, the deputy public prosecutor ('the DPP') argued that the remand application ought to have proceeded under s 117 of the CPC and the procedure adopted by the magistrate was therefore wrong. The High Court had thus to decide whether the arrest and detention of a child must be under s 117 of the CPC or under the provisions of the Act.

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Held, affirming the correctness of the magistrate's course of action:

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(1) Section 83(1) of the Act makes it manifestly clear that the arrest and detention of a child has to be in accordance with the Act thereby rendering s 117 inapplicable as expressly provided. Unlike s 117, s 84(2) of the Act which deals with the detention of a child does not prescribe any time period for detention. The determination of such period is governed by s 54(2) of the Interpretation Act 1967. Thus the length of time for which a child may be detained is for a period which is absolutely necessary as decided by the Court on the facts of each case (see p 47F-H).

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(2) Section 110 of the Act which provides for the arrest of 'any person' for the commission of any offence against the Act to be in accordance with the CPC must be interpreted as being applicable to a person who is not a child (see p 47H-I).

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[Bahasa Malaysia summary]

N — seorang kanak-kanak dalam maksud Akta Kanak-Kanak 2001 ('Akta tersebut') — telah dihadapkan di hadapan mahkamah di Kuala

Lumpur untuk satu perintah tahanan atau untuk tempoh tujuh hari di bawah s 117 Kanun Acara Jenayah ('KAJ'). Majistret telah mengubahkan permohonan tahanan tersebut kepada suatu yang di bawah s 84(2) Akta tersebut dan memerintahkan penahanan N sebagaimana yang diperuntukkan dalam Akta tersebut. Majistret tersebut kemudian telah meragui pelaksanaan tindakan beliau adalah betul. Beliau dengan itu memohon Mahkamah Tinggi untuk menyemak perintah beliau jika terdapat kesilapan di dalamnya. Semasa penyemakan prosiding di Mahkamah Tinggi, timbalan pendakwa raya ('TPR') telah berhujah bahawa permohonan penahanan sepatutnya dimulakan di bawah s 117 KAJ dan prosedur yang digunakan oleh majistret adalah salah. Mahkamah Tinggi oleh demikian terpaksa memutuskan sama ada tangkapan dan penahanan seorang kanak-kanak harus dibuat di bawah s 117 KAJ atau di bawah peruntukan-peruntukan Akta tersebut.

Diputuskan, mengesahkan bahawa pelaksanaan tindakan majistret adalah betul:

- (1) Seksyen 83(1) Akta tersebut dengan jelas menyatakan bahawa tangkapan dan penahanan seorang kanak-kanak hendaklah bersesuaian dengan Akta tersebut yang menyebabkan s 117 tidak terpakai. Tidak seperti s 117, s 84(2) Akta tersebut adalah mengenai penahanan seorang kanak-kanak yang tidak menyatakan tempoh masa untuk tahanan. Penentuan tempoh sedemikian dikawal oleh s 54(2) Akta Tafsiran 1967. Oleh itu jangka masa untuk seseorang kanak-kanak boleh ditahan adalah untuk satu tempoh yang perlu diputuskan oleh mahkamah berdasarkan fakta-fakta setiap kes (lihat ms 47F–H).
- (2) Seksyen 110 Akta tersebut yang memperuntukkan untuk tangkapan 'any person' kerana melakukan apa-apa kesalahan terhadap Akta tersebut bersesuaian dengan KAJ hendaklah ditafsirkan sebagai terpakai ke atas seseorang yang bukan seorang kanak-kanak (lihat ms 47H–I).]

Notes

For cases on arrest generally, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 604–659.

Legislation referred to

Child Act 2001 ss 83(1), 84(2), 110

Criminal Procedure Code s 117

Penal Code s 420

Appeal from: Arrest Case No D16 of 2003 (Magistrate's Court, Kuala Lumpur)

A *Stanley Augustin* (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.

B **Augustine Paul J:** N, a female, is a child within the meaning of the Child Act 2001 ('the Act'). On 11 April 2003, she was arrested by the police on suspicion of having committed an offence under s 420 of the Penal Code. As investigations could not be completed within 24 hours the police produced N before the magistrate at Kuala Lumpur for an order to remand her for a period of seven days under s 117 of the Criminal Procedure Code ('s 117'). The learned magistrate, recognizing that N is a child, converted the application to one under s 84(2) of the Act and made an order for her detention as provided by the Act. The learned magistrate then entertained some doubts as to the propriety of the course of action taken and requested the High Court to revise the order made if there was an error.

D At the revision proceeding before me the learned deputy public prosecutor argued that the procedure adopted by the learned magistrate is wrong as the application ought to have been one under s 117 as that is the provision of law that deals with remand applications to facilitate investigations.

E The issue for deliberation is whether the arrest and detention of a child must be under s 117 as contended by the learned deputy public prosecutor or under the Act as understood by the learned magistrate. The answer, to my mind, lies in s 83(1) of the Act which reads as follows:

F Notwithstanding anything contained in any written law relating to the arrest, detention and trial of persons committing any offence but subject to sub-ss (3) and (4), a child who is alleged to have committed an offence shall not be arrested, detained or tried except in accordance with this Act.

G This section makes it manifestly patent that the arrest and detention of a child shall be in accordance with the Act thereby rendering s 117 inapplicable as expressly provided. Unlike s 117 s 84(2) of the Act which deals with the detention of a child does not prescribe any time period for detention. The determination of the period in such a situation is governed by s 54(2) of the Interpretation Act 1967 which reads as follows:

H Where no time is prescribed within which anything shall be done that thing shall be done with all convenient speed and as often as the prescribed occasion arises.

I It follows that the length of time for which a child may be detained is for a period which is absolutely necessary as decided by the court on the facts of each case. There can be further orders of detention if deemed to be appropriate. I must add that s 110 of the Act which provides for the arrest of 'any person' for the commission of any offence against the Act to be in accordance with the Criminal Procedure Code must be interpreted as being applicable to a person who is not a child. Thus it does not affect the order made by me.

The course of action adopted by the learned magistrate is therefore correct in law. **A**

Correctness of the magistrate’s course of action affirmed.

Reported by Andrew Christopher Simon

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